No. 86-1303

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

Supreme Court, U.S.
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H. J. LUBBEHUSEN, DONALD L. MILES and M. JACQUELINE MILES; MARTIN LEICH; CAROL LANT; BETTY L. DAVIS; OSCAR L. MILLER and ELIZABETH H. MILLER; DARRELL HIGGS; WALTER TIEDMAN and RUTH TIEDMAN; JOHN MUTH and ELIZABETH MUTH; PAUL WILLIAMS; JOHN MOORE and JUDY MOORE; individually and as representatives of a class of taxpayers of Vanderburgh County, Indiana,

Petitioners,

vs.

STATE OF INDIANA, et al; BOARD OF TAX COMMISSIONERS; ALICE McBRIDE, AS AUDITOR OF VANDERBURGH COUNTY; LEWIS VOLPE, AS TREASURER OF VANDERBURGH COUNTY; VANDERBURGH COUNTY COMMON COUNCIL,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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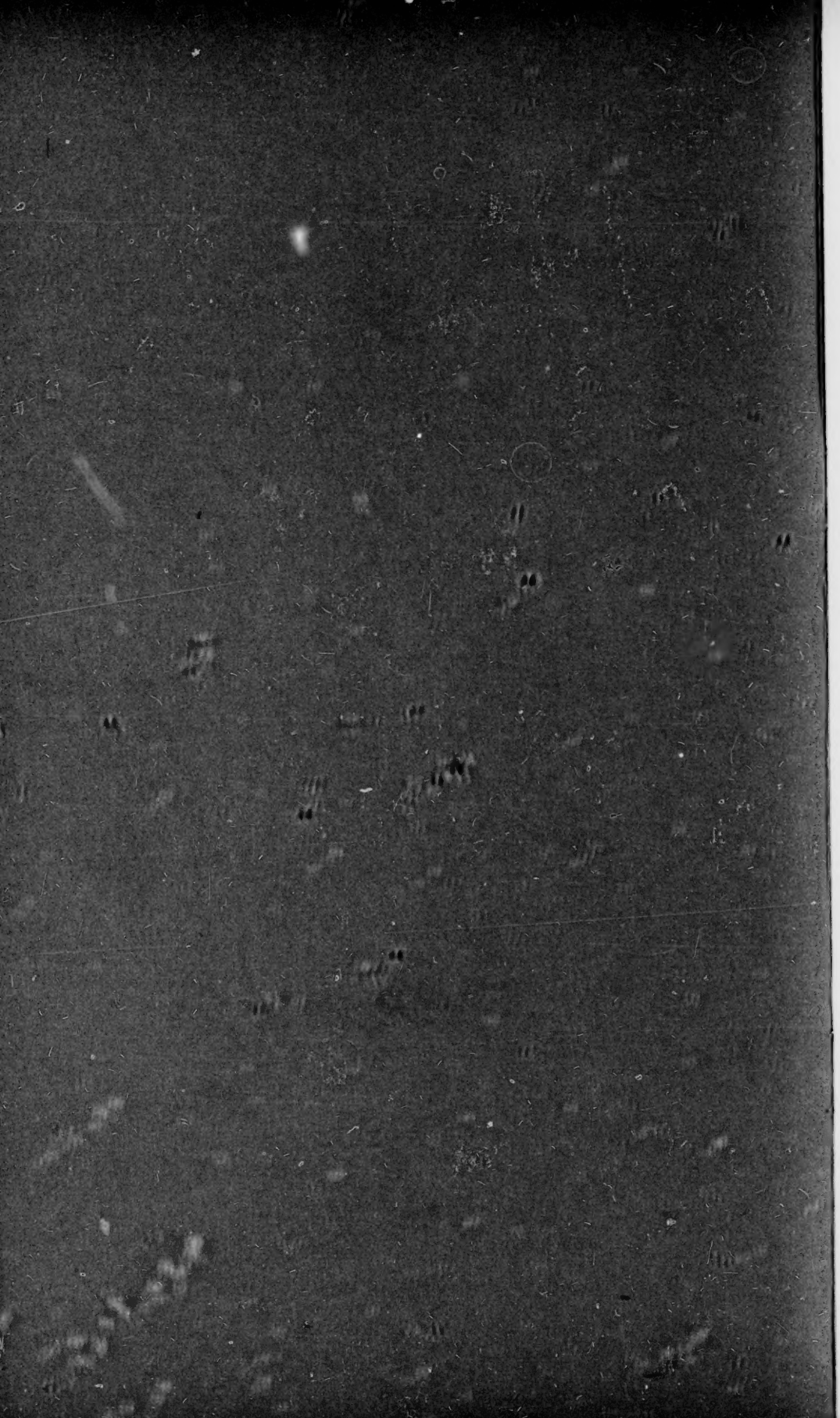

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Respondents, State of Indiana, *et al.*, respectfully pray this Court to deny issuance of a writ of certiorari to review the orders and opinion of the Court of Appeals of Indiana First District, thereby refusing to review the memorandum decision

of the Court of Appeals of Indiana entered in this case on August 4, 1986; transfer denied by the Supreme Court of Indiana on December 1, 1986.

STATEMENT OF THE CASE

Respondents do not accept Petitioners' statement of the case.

This is a class action on behalf of taxpayers in Vanderburgh County, Indiana, to have a state statute, Indiana Code 6-1.1-14-1, *et seq.*, declared to be unconstitutional, and to have the State Board of Tax Commissioners' Equalization Order, which had been entered in conformity with that statutory authority, also declared to be unconstitutional and enjoin the enforcement of that Equalization Order. Petitioners have included the notice and Order in their Petition, at pages 4, 5 and 6. All notice and hearing provisions which apply to this Equalization Order were met; however, no individual, written notice was personally given to members of plaintiffs' class regarding the Equalization Order until they received their bill for additional taxes. The trial court, Court of Appeals of Indiana and the Supreme Court of Indiana have all declined to find the provisions for equalization of assessments of Indiana Code 6-1.1-14-1, *et seq.*, to be unconstitutional as Petitioners have claimed.

REASONS FOR DISALLOWANCE OF THE WRIT

The notice and hearing requirements in Indiana Code 6-1.1-14-1, *et seq.*, satisfy the due process requirements of the United States Constitution Amendment V and Amendment XIV.

In Indiana, the equalization process, Indiana Code 6-1.1-14-1, *et seq.*, is one by which the State Board of Tax Commissioners may review the propriety of the property tax assessments within and among the various taxing districts. In this particular instance all taxpayers of Vanderburgh County were notified by publication in the local newspapers as follows:

> Notice to the taxpayers of Vanderburgh County, Indiana.
>
> Notice is hereby given to the taxpayers of Vanderburgh County, Indiana that the State Board of Tax Commissioners will conduct a public hearing in the City Council Chambers, Civic Center, Evansville, Indiana, on August 26, 1981, at 10:00 A.M., CDT. The State Board of Tax Commissioners is considering the possible modification of all real property assessments within the county as of March 1, 1979, pursuant to IC 6-1.1-14-4.
>
> At such hearing, all interested parties will be given the opportunity to be heard on said matters. Said parties may appear with or without counsel. The State Board of Tax Commissioners will also accept written statements and exhibits at or before this hearing.

Every statutory notice requirement for equalization was met. The issue is whether they are sufficient. These notices would reasonably alert taxpayers that their property taxes might be modified and give the time and place for the opportunity of a hearing on the matter.

There is an apparent and justifiable difference in the required statutory notice for equalization, which is a broad review of all property assessments within a taxing district, as opposed to the review of a particular property. Notice under Indiana Code 6-1.1-14-1, *et seq.*, is primarily through local newspaper publication so as to give notice to the maximum number of persons who might be affected by the county-wide equalization of property tax assessments.

Petitioners rely upon *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) as providing that publication alone does not afford due process. However, there the Court was dealing with a sale of a particular piece of property for back taxes and the due process rights of a mortgagee for notice of such a sale. In that case the Court held that due process required notice by mail to ensure actual notice to the mortgagee. Imposing this requirement when dealing with one property and one mortgagee is a relatively minor burden. Furthermore, the potential harm to the mortgagee's interest is quite great. On balance, the burden imposed

by the holding in *Mennonite Board v. Adams, id.*, is slight when weighed against the value of the property interest of the mortgagee which is to be determined. Likewise, the interest of a mortgagee is a legally recognized property interest to which due process rights would attach.

Petitioners provide no support for an assumption that assessed valuations assigned to property for taxation purposes are legally recognized property interests to which due process rights attach. They are not comparable. Nowhere in *Mennonite Board v. Adams, id.*, did the Court absolutely state that notice by publication was a denial of due process in other proceedings where publication notice is permitted by statute.

The primary due process standard is "reasonableness" of the means of notice chosen by the state. This requires a balance of the interest of the state versus the interest of the individual who claims protection by the Fourteenth Amendment. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

Finally, cases have long held "The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain." *Leigh v. Green* 193 U.S. 79, 89, 24 S.Ct. 390, 392, 48 L.Ed. 623 (1904) (quoting *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232, 239, 10 S.Ct. 533, 535, 33 L.Ed. 892 (1890)).

CONCLUSION

For the above reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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